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8 SOFTSCAPE, INC.

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 OAKLAND DIVISION

12 SUCCESSFACTORS, INC, a Delaware
corporation,

13 Plaintiff,

14 vs.

15 SOFTSCAPE, INC., a Delaware corporation,
16 and DOES 1-10, inclusive,

17 Defendants.

Case No. C08-1376 CW (BZ)

DISCOVERY MATTER

**DECLARATION OF JOSEPH FOUGERE
IN SUPPORT OF DEFENDANT'S
OPPOSITION TO PLAINTIFF'S
MOTION TO COMPEL**

Judge: Honorable Bernard Zimmerman

Date: September 3, 2008

Time: 10:00 a.m.

Judge: Honorable Bernard Zimmerman

Location: Courtroom G 15th Floor

Complaint Filed: March 11, 2008

Trial Date: June 1, 2009

23
24 I, Joseph Fougere, under penalty of perjury, declare as follows:

25 1. I am Vice President of Engineering Solutions for Softscape, Inc. ("Softscape").

26 2. The following declaration is based on my personal knowledge. If called upon to
27 testify, I could and would testify competently as to the matters set forth herein.

28 3. I have worked at Softscape for over nine years with various roles in the information

1 technology and services ("IT") areas. I am familiar with and responsible for managing Softscape's IT
2 systems and infrastructure.

3 4. In connection with this litigation, I was trained to use Guidance Software's EnCase
4 computer forensics and e-discovery tools.

5 5. During my tenure at Softscape, I have worked with Microsoft Windows ("Windows")
6 from version 9x to 2003. I am familiar with the installation, upgrades, and administration of MS
7 Windows on both server and desktop platforms. At Softscape, I have had responsibilities to install,
8 upgrade, and support the Microsoft Office products ("MS Office") which includes the PowerPoint
9 program.

10 6. I have been personally involved in the searching for and collection of electronically
11 stored information contained within the "forensic images" that were made of all computers, hard drives
12 and servers known to have contained or been used to create or modify the "Naked Truth" PowerPoint
13 Presentation that is at issue in this case ("the Presentation").

14 7. I have reviewed pages 6, 7 and 8 of the motion to compel filed by SuccessFactors, Inc.
15 ("SuccessFactors"), which contains a discussion of Softscape's production of the Presentation and
16 various technical issues related thereto.

17 8. Through the use of Guidance Software's EnCase computer forensics and e-discovery
18 tools, Softscape has searched every piece of electronic media in its possession, custody and control that
19 it understood the Presentation to reside upon for all versions thereof.

20 9. To my knowledge, Softscape has produced every version of the Presentation that
21 resided on its computers and servers. All of these files were produced in native format and
22 therefore contained the normal "metadata" associated with those types of files, such as version data,
23 file histories, creation dates, last modified and access dates, author information, embedded
24 information.

25 10. Softscape does not have a separate document management system or program on its
26 server system and network that created logs showing edits to the Presentation (or any other similar
27 document), retained prior versions of the Presentation, or retained any related metadata beyond
28 what is reflected in Microsoft's Windows Operating System and the PowerPoint program from the

1 Microsoft Office suite. To my knowledge, Softscape also does not maintain server logs files to
2 track revisions to a document or has a feature in its IT system that would maintain all versions of
3 the Presentation that might have existed. Rather, when editing and saving the Presentation to
4 Softscape computers and servers, prior “versions” were overwritten, which is what normally occurs
5 in the Windows and PowerPoint environment. The only way different “versions” of the
6 Presentation would be saved to Softscape’s servers or computers is if the user manually saved the
7 new version as a separate file in the Windows environment or if it was sent as an attachment to an
8 email.

9 11. I understand that SuccessFactors is seeking information concerning the folders in
10 which the Presentation resided because those folders will purportedly have names, creators,
11 creation and modification dates associated with them. However, the metadata that the Windows
12 operating system creates for folders will be less informative than what is attached to the individual
13 files residing in those folders. My understanding is that Windows does not associate file-specific
14 metadata with folder metadata.

15 12. I understand that SuccessFactors is seeking the local drive directory structures of
16 Softscape’s computers as a means to identify from where the various versions of the Presentation
17 were produced because it may lead to the “source creation location.” This is not correct. Directory
18 structures will only show where the files resided and nothing concerning the creation or editing of
19 those documents. As stated above, the latter type of information is attached to the files themselves.

20 13. I understand SuccessFactors is seeking “local drive file histories,” which it says will
21 show document creation, last accessed, and last written as written to the Microsoft Windows
22 Operating system. This is a misleading term and what I understand SuccessFactors to mean to be
23 associate with “local drive file histories” is the information concerning the create, last modified,
24 and last accessed dates, which is what is included in the metadata associated with each version of
25 the Presentation and has already been produced by Softscape.

26 14. I understand that SuccessFactors cites to screen shots of statistics associated with a
27 March 3, 2008 version and a March 24, 2008 version of the Presentation. These screenshots appear
28 to be taken from the document property “revision number” that is created by the PowerPoint

1 program. I understand that SuccessFactors argues from these screenshots that 52 versions of the
2 Presentation were created between March 3rd and March 24th. I do not believe that this conclusion
3 is correct. The number of "revisions" shown in the PowerPoint metadata relates to the number of
4 times a user "saved" the file during editing, not the number of stand-alone versions.

5 15. I understand that SuccessFactors is requesting that Softscape search its entire
6 systems for over 750 individual email addresses. Setup time is required in EnCase for development
7 and testing of new search criteria. I estimate that creating a criteria for over 750 email addresses
8 would take 40 to 80 man-hours (i.e. one to two man-weeks) to complete the setup.

9 16. Thereafter, there are approximately 350 mailboxes that will require converting to
10 PST formats for EnCase to process. I estimate it will approximately 680 man-hours (i.e. seventeen
11 man-weeks) to complete such a conversion.

12 17. After the PST files are created, I estimate it will take about 240 man-hours (i.e., six
13 man-weeks) to run the search and collection on email and attachments in EnCase. There will be an
14 additional 120 man-hours (i.e. three man-weeks) to run the new search criteria on all the servers
15 and laptop images. After the search is completed, it will take additional time for Softscape's
16 attorneys to review the emails and documents returned by the search for responsiveness. This
17 additional time is dependant on the quantity of documents generated by the EnCase search.

18 I declare under penalty of perjury that the foregoing is true and correct. Executed this 13
19 day of August, 2008 at Wayland, Massachusetts.

20
21 By: Joseph L. Fougere
JOSEPH FOUGERE

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